Supreme Court, U.S.
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No. 98-916

IN THE

Supreme Court of the United States

OCTOBER TERM, 1998

ALLISON DEAS,

Petitioner,

vs.

RIVER WEST, L.P.; ALTERNATIVE ADDICTION TREATMENT CONCEPTS, INC. and STROTHER P. LINDSEY-DIXON,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

RESPONDENTS' BRIEF IN OPPOSITION

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STATEMENT PURSUANT TO RULE 29.6

Respondent, Alternative Addiction Treatment Concepts, Inc., has no parent company and no nonwholly owned subsidiaries.

ARGUMENT IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

As detailed below, there is no cause for this Court's review of this factbased case, which has now been rejected by the United States District Court for the Middle District of Louisiana and the United States Fifth Circuit Court of Appeals.

The petition for writ of certiorari is replete with misrepresentations and/or distortions of the record and the positions of the parties both in the District Court and the Court of Appeals. The most glaring and fundamental of these misrepresentations, the pillow upon which the whole writ application rests, relates to petitioner's mischaracterization of Dr. Dixon's perceptions relative to whether Ms. Deas' condition precluded her from working in a hospital setting. There is nothing in the record which speak to Ms. Deas' ability or inability to work in a clinic or hospital setting. Dr. Dixon, throughout her deposition, makes it clear that her concern was limited to the "unit" (Strivers Alternative Addiction Treatment Program at River West Medical Center) because of the type patients she planned to admit to that unit. Moreover, Deas' own representation contradicts her position here, that Dr. Dixon considered her to have a substantially limiting impairment (while it is doubtful this representation is true since Dr. Dixon's sole authority, in the premises, was limited to the unit, but for the purpose of this argument we will assume it to be true). Deas states that in the exit interview Dr. Dixon (and Miller) told her that they had looked for another job somewhere in the hospital that could accommodate her, but they were unable to find one; an action that could not have been logically taken if Dr. Dixon had perceived Deas' condition as precluding her from working in a clinic or hospital setting.

While some of the misrepresentations and/or distortions set out below may seem technical or minor they are actually

suggestive of the convoluted, contradictory and ever changing posture that petitioner has assumed in the District Court and the Court of Appeals. These misrepresentations are outlined as follows:

1. There is no support in the record for petitioner's characterization "epileptic-type seizures" or "purported epileptic condition" (that occurs on page 5). Petitioner, in both the District Court and Court of Appeals, claims that she is not disabled at all. The only remote reference to epilepsy appears in an entrance medical questionnaire where Deas indicated that she had bouts with epilepsy or fits from age six to age twenty, but had been free of any symptoms of this disease for three years.

2. The few times the petitioner did seek evidentiary support for her charges she grossly distort the record. For example, petitioner states, "the plaintiff presented sufficient evidence, in the form of Dr. Dixon's own deposition testimony, that Ms. Deas was regarded as unable to see, hear or speak during a seizure." (Occurring on page 15) The record shows that Dr. Dixon testified in her deposition that Ms. Deas experienced a petit mal seizure in her presence and she defined petit mal seizure as follows:

> . . . one does not necessarily lose consciousness, but awareness. And they don't have a general jerking and spasmodic reaction throughout the body, but they are not aware of their surrounding. And they move their head or face in a certain way for a certain length of time and not be aware of their environment for a few seconds

The record and the evidence is deplete of any facts to the effect that Dr. Dixon stated that she regarded Ms. Deas as being unable to see, hear or speak during a seizure.

3. Again on page 16, petitioner grossly misrepresents the fact when she states, ". . . her employer treated her as disabled and felt that the job of addiction technician was to dangerous for an 'epileptic.' " No where in the record does Dr. Dixon refer to Ms. Deas as an epileptic or describe her condition as epilepsy.

4. A further distortion of the record occurs on page 17 when the petitioner alleges,

> The evidence showed that Dr. Dixon was primarily concerned that in the event of a seizure, the plaintiff would be unable to see, hear or speak to patients and co-workers in the unit; obviously, Dr. Dixon viewed this restriction as significant, as it drove her decision to terminate Ms. Deas

Dr. Dixon's deposition testimony as to her concerns was as follows: "Because during the time of the seizures, she would be unable to help out with other patients and put herself at risk being in the presence of patients that could take advantage of her". The record is void of any reference to Ms. Deas' ability to see, hear, or speak during a seizure. This concept is one of the plaintiff's making being first introduced in plaintiff's opposition brief to the Motion for Summary Judgment before the United States District Court for the Middle District of Louisiana.

5. The petitioner's characterization of Dr. Dixon's preception as being that Ms. Deas was unable to work in any job in the hospital is based on similar liberties with the facts. On page 20 of the petition it is stated,

> Although Dr. Dixon later testified that plaintiff would be suited for work as a receptionist, there was nevertheless, evidence that at the time of Ms. Deas' termination, Dr. Dixon regarded the plaintiff as unable to work at any job in the hospital.

In context, Dr. Dixon's testimony was in response to the question. "Okay, well, tell me a place that she could work that would be safer than a hospital for someone who has seizures?" Dr. Dixon responded, "I could tell you a number of places." When asked, "so its your opinion, as a doctor, that somebody who suffer from seizures shouldn't work in a hospital at all?" Dr. Dixon responded, "I felt that the type of unit that we had and the number of employees that we had that Allison Deas, in her condition, could not be a value to the unit and could be a danger to herself." Throughout Dr. Dixon's deposition testimony she restricted her references to the fact that she believed Ms. Deas not to be an appropriate employee for the "unit."

REASONS FOR DENYING THE WRIT

1. The petition cites no decisions to support the claim that the decision of the District Court and the Court of Appeals are in conflict with decisions of other state and federal courts on parallel issues.

2. There are no other reasons for this court to address the petitioner's novel and completely unsupported argument for recognizing "seizures" as a disability per se. As indicated by the Court of Appeal, the petitioner has failed at every stage of these proceedings to provide any evidence or any reasoned argument or persuasive precedent that would warrant the court granting the petition for writ of certiorari.

3. The decisions below were a correct application of the provisions and the intent of the Americans with Disabilities Act. 42 U.S.C. §§ 12101-12113.

CONCLUSION

For the reasons outlined above, and those cited in the lower courts decisions the petition for writ of certiorari should be denied.

Respectfully submitted,

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